

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

American Samoa Government and the)
American Samoa Telecommunications)
Authority)

CC Docket No. 96-45
AAD/USB File No. 98-41

Petitions for Waivers and Declaratory)
Rulings to Enable American Samoa to)
Participate in the Universal Service High)
Cost Support Program and the National)
Exchange Carrier Association, Inc.)
Pools and Tariffs)

COMMENTS

National Exchange Carrier Association, Inc.
100 South Jefferson Road
Whippany, NJ 07981

March 18, 1998

No. of Copies rec'd
List A B C D E

025

TABLE OF CONTENTS

I.	BACKGROUND	2
II.	DISCUSSION	3
A.	Clarification of Part 69 Definitions and NECA Membership	3
B.	Waiver of Universal Service Fund Rules	4

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
American Samoa Government and the)	
American Samoa Telecommunications)	CC Docket No. 96-45
Authority)	AAD/USB File No. 98-41
)	
Petitions for Waivers and Declaratory)	
Rulings to Enable American Samoa to)	
Participate in the Universal Service High)	
Cost Support Program and the National)	
Exchange Carrier Association, Inc.)	
Pools and Tariffs)	

COMMENTS

Pursuant to the Commission's *Public Notice*,¹ the National Exchange Carrier Association, Inc.² (NECA) files its comments in support of the Petition for waivers and declaratory rulings filed by the American Samoa Government (ASG) and the American Samoa Telecommunications Authority (ASTA) in the above captioned matter.³

¹ *Public Notice*, CC Docket No. 96-45, AAD/USB File No. 98-41, DA 98-417, Commission Seeks Comment on Petition of the Samoa Government and the American Samoa Telecommunications Authority (rel. Mar. 3, 1998). As required in the *Public Notice*, these comments will also be provided on diskette in WordPerfect 5.1 "read only" format.

² NECA is a not-for-profit membership association serving 1,400 local exchange carrier (EC) study areas. NECA is responsible, under Subpart G of Part 69 of the Commission's rules, for activities including the collection and distribution of access charge revenues, preparation of access charge tariffs on behalf of all telephone companies that do not file separate tariffs, and the preparation and filing of average schedule formulas. See 47 C.F.R. §§ 69.603 and 69.606.

³ American Samoa Government and the American Samoa Telecommunications Authority, *Petition for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Program and the National Exchange Carrier Association Pools and Tariffs* (filed February 6, 1998) (Petition).

I. BACKGROUND

ASG, through the American Samoa Office of Communications (ASOC), states that it offered local exchange service in the American Samoa territory up until January 1998.⁴ ASTA was authorized by the ASG to provide telecommunications service on January 9, 1998.⁵ According to the Petition, ASTA is the only entity currently supplying local exchange service, as well as interexchange capability, to approximately 80% of the households of American Samoa.⁶ ASG and ASTA argue that ASTA's immediate participation in the universal service high cost support program is in the public's interest.⁷ Neither ASOC, nor its successor ASTA, were NECA members or had received universal service support prior to February 8, 1996. ASG and ASTA filed their petition requesting waivers of 47 C.F.R. §§ 36.611 and 69.2 so that ASTA can participate as a member of NECA's pools and tariffs under Part 69 of the Commission's rules and participate in the universal service program as of January 1, 1998.⁸

⁴ Petition at 3.

⁵ *Id.* at 3. The Governor of American Samoa issued an executive order establishing the ASTA to handle telecommunications operations previously handled by ASOC. *Id.*

⁶ American Samoa's remote location, limited economy and small population prevent other companies from offering services. *Id.* at 3. The population of American Samoa, as of July 1, 1996, was approximately 58,000. *Id.* at n. 2.

⁷ *Id.* at 6. NECA agrees that ASTA's participation in the universal service program is in the public's interest. According to the petition, American Samoa's annual per capita income is \$3,309 and median annual household income is \$16,114. *Id.* at 4. In addition, consumers in insular areas are entitled to access to telecommunications and information services at reasonable rates. *See* 47 U.S.C. § 254 (b)(3).

⁸ Petition at 1 and 9-10.

II. DISCUSSION

A. Clarification of Part 69 Definitions and NECA Membership

ASG and ASTA seek a waiver of definition of "telephone company" as defined in section 69.2 (hh) of the Commission's rules, 47 C.F.R. § 69.2 (hh).⁹ In its *Access Charge Reform Order*, the Commission changed this definition to "an incumbent local exchange carrier."¹⁰ Since ASOC and its successor ASTA were not NECA members, or a successor or assignee of an incumbent LEC, as of February 8, 1996, both do not meet the statutory definition of an "incumbent LEC."¹¹ NECA agrees that the Commission should clarify that ASTA may become a NECA member under the current rules, noting that ASTA and its predecessor, ASOC, have been providing local exchange service in American Samoa for a number of years prior to 1996.¹²

⁹ The term "telephone company" is incorporated in the rule governing NECA membership. See 47 C.F.R. § 69.601 (b).

¹⁰ A "telephone company" is defined in new section 69.2 (hh) as an incumbent local carrier as defined in section 251 (h)(1) of the Communications Act. Access Charge Reform, CC Docket No. 96-292, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Transport Rate Structure and Pricing, CC Docket No. 91-213, End User Common Line Charges, CC Docket No. 95-72, *First Report and Order*, 12 FCC Rcd 15982 at ¶ 396 (1997) (*Access Reform Order*).

¹¹ An "incumbent local exchange carrier" (incumbent LEC) is a provider of telephone exchange service and a NECA member as of February 8, 1996 and that a successor or assignee of an incumbent LEC is also an incumbent LEC. See 47 U.S.C. § 251 (h)(1).

¹² This would be consistent with 47 U.S.C. § 251 (h)(2) which allows the Commission to treat comparable carriers as incumbent LECs. Specifically, the Commission may, by rule, allow a local exchange carrier to be treated as an incumbent LEC if that carrier occupies a position similar to ILEC under § 251 (h) (1), if that carrier has replaced the ILEC in that respective area, and if such treatment is in the public's interest.

B. Waiver of Universal Service Fund Rules

Current Commission rules require that high cost loop support be based on a carrier's historical cost information.¹³ These rules would preclude ASTA from receiving universal service (US) support for high cost loops until 2000.¹⁴ ASG and ASTA file this petition for waiver of the Commission's historic cost rules in order for ASTA to receive universal service support effective January 1, 1998.¹⁵ ASTA recognizes that the Commission has previously granted waivers to other entities to allow them to receive high cost loop support using projected costs rather than the required historical costs.¹⁶ ASTA proposes to submit to NECA an estimate of historical costs and/or rolling annualized average of current costs subject to quarterly true-up adjustments based

¹³ 47 C.F.R. § 36.611. Section 36.611 only applies to incumbent LECs. The purpose of the incumbent LEC restriction in section 36.611 is to distinguish competitive LECs from incumbent LECs in order to calculate universal service support. *See* Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification, *Order*, AAD 97-82, DA 98-166 (rel. Feb. 3, 1998).

¹⁴ Petition at 11. Beginning January 1, 1998, only eligible telecommunications carriers (ETCs) shall receive universal service support distributed pursuant to Parts 36 and 69 of the Commission rules. 47 C.F.R. § 54.201(a)(1). As of February 6, 1998, ASTA was not a designated an ETC. However, the Governor of American Samoa by a December 1, 1997 Executive Order, designated the ASOC, ASTA's predecessor, an "eligible telecommunications carrier" pursuant to sections 214 and 254 of the Telecommunications Act. Petition at 5.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 12 *citing e.g.*, South Park Telephone Company, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules, *Order*, AAD 97-41, DA 97-2730 (rel. Dec. 31, 1997); Border to Border Communications, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules, *Memorandum Opinion and Order*, 10 FCC Rcd 5055 (1995); and Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification, *Order*, AAD 97-82, DA 98-166 (rel. Feb. 3, 1998).

on actual costs.¹⁷

The methodology set forth in the Petition is administratively feasible and can be incorporated into current USF reporting mechanisms if the Commission grants ASG and ASTA's request.¹⁸ Although ASTA will not be submitting actual data immediately, ASTA's proposed true-up mechanism will permit actual data to be incorporated as soon as possible. Under these circumstances, it seems reasonable to use current data as a surrogate for 1996 costs.

The Commission should act expeditiously to grant ASG and ASTA's requests for waiver of the Commission's rules to permit ASTA to become a NECA member and to submit USF data based on projections.

Respectfully submitted

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: 

Richard A. Askoff
100 South Jefferson Road
Whippany, NJ 07981

Its Attorney

Donna A. DiMartino
Regulatory Attorney

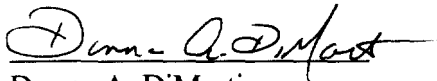
March 18, 1998

¹⁷ Petition at 12.

¹⁸ See generally, 47 C.F.R. §§ 36.611, 36.612 and 36.613.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served this 18th day of March 1998, by mailing copies thereof by United States Mail, first class postage paid or by hand delivery to the persons listed below.

By: 
Donna A. DiMartino

Magalie Roman Salas*
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554
(Original and five copies)

Sheryl Todd*
Universal Service Branch
Accounting and Audits Division
Common Carrier Bureau
2100 M Street, N.W., 8th Floor
Washington, DC 20554
(Three copies)

Richard S. Rodin
David L. Sieradzki
Cindy D. Jackson
Hogan & Hartson, LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
(Attorneys for American Samoa Government
and the American Samoa Telecommunications
Authority)

International Transcription Service (ITS)*
1231 20th Street, N.W.
Washington, DC 20037

*Hand Delivered

National Exchange Carrier Association, Inc.
March 18, 1998